

## § 530.304

## 5 CFR Ch. I (1–1–12 Edition)

entitled to a higher locality rate or a retained rate.

### § 530.304 Establishing or increasing special rates.

(a) OPM may increase the minimum rates of pay otherwise payable to a category of employees in one or more areas or locations, grades or levels, occupational groups, series, classes, or subdivisions thereof, when it is necessary to address existing or likely significant recruitment or retention difficulties. OPM will consider the circumstances listed in paragraph (b) of this section and the factors listed in § 530.306 when evaluating the need for special rates. When OPM establishes a minimum special rate under this authority, corresponding increases also may be made in one or more of the remaining rates of the affected grade or level. For any given grade, a minimum special rate may not exceed the maximum rate of basic pay for the rate range (excluding any locality rate, other special rate, or similar payment under other legal authority) by more than 30 percent. A special rate may not exceed the rate for level IV of the Executive Schedule.

(b) The circumstances considered by OPM in evaluating the need for special rates are the following:

(1) Rates of pay offered by non-Federal employers which are significantly higher than those payable by the Government within the area, location, occupational group, or other category of positions under GS pay system;

(2) The remoteness of the area or location involved;

(3) The undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards);

(4) Locality pay authorized under 5 U.S.C. 5304 for the area involved;

(5) A nonforeign area cost-of-living allowance authorized under 5 U.S.C. 5941(a)(1) for the area involved; or

(6) Any other circumstances OPM considers appropriate.

(c) In setting the level of special rates within a rate range for a category of employees, OPM will compute the special rate supplement by adding a fixed dollar amount or a fixed percent-

age to all GS rates within that range, except that an alternate method may be used—

(1) For grades GS-1 and GS-2, where within-grade increases vary throughout the range; and

(2) In the nonforeign areas listed in 5 CFR 591.205 for special rate schedules established before January 1, 2012.

(d) If OPM establishes a special rate schedule that covers only law enforcement officers, OPM may compute the special rate supplement for grades GS-3 through 10 as a fixed percentage of LEO special base rates instead of GS rates. With respect to such a schedule, references to GS rates in § 530.307 are deemed to be references to LEO special base rates.

(e) Using its authority in section 1918(a)(1) of the Non-Foreign Area Retirement Equity Assurance Act of 2009 in combination with its authority under 5 U.S.C. 5305, OPM may establish a separate special rate schedule for a category of employees who are in GS positions covered by a nonforeign area special rate schedule in effect on January 1, 2012, and who are employed in a nonforeign area before an OPM-specified effective date. Such a separate schedule may be established if the existing special rate schedule is being reduced. An employee's coverage under the separate special rate schedule is contingent on the employee being continuously employed in a covered GS position in the nonforeign area after the OPM-specified effective date. Such a separate special rate schedule must be designed to provide temporary pay protection and be phased out over time until all affected employees are covered under the pay schedule that would otherwise apply to the category of employees in question.

[70 FR 31287, May 31, 2005, as amended at 73 FR 66151, Nov. 7, 2008; 76 FR 68633, Nov. 7, 2011]

### § 530.305 Agency requests for new or increased special rates.

(a) An agency may request that a special rate schedule be established or increased or that its employees be covered by an existing special rate schedule at any time. An authorized agency official in the agency headquarters office must submit to OPM any request